

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Case No. 1:18-CR-457 (AJT)
	:	
BIJAN RAFIEKIAN	:	
	:	
and	:	
	:	
KAMIL EKIM ALPTEKIN,	:	
	:	
Defendants.	:	

**DEFENDANT BIJAN RAFIEKIAN'S OPPOSITION
TO THE GOVERNMENT'S MOTION TO CONTINUE HEARING
ON DEFENDANT'S MOTION TO COMPEL RECORDS**

The Court should deny the Government's requests to continue (i) the hearing noticed for March 15, 2019 and (ii) the deadline to file a response to Mr. Rafiekian's Motion to Compel Records (ECF No. 56) – which sought a Court order compelling the United States to produce all *Giglio* material in the Government's possession, including all FD-302 memoranda of interviews of Michael T. Flynn.

Mr. Rafiekian filed his Motion to Compel on March 1, 2019 and noticed the hearing for March 8, 2019. On March 4, 2019, the Court continued the hearing date to March 15, 2019. As is customary in this District, the Government's response is due the week of the hearing, and in this case, it was due on the day of the hearing. Nearly two weeks after the Motion was filed, the Government requests a total of five weeks to formulate a response, despite the 14-day response deadline provided in Local Criminal Rule 12. The Government further seeks to delay the hearing for an additional four weeks until April 12, 2019—three days before the deadline to file pre-trial motions. Such a delay would not allow Mr. Rafiekian sufficient time to review the *Giglio*

materials, incorporate any of those materials in its pre-trial motions, and prepare and file such motions.

On February 22, 2019, the Government emailed undersigned counsel: “We have read those 302s and are in the process of re-reviewing them with our *Giglio* obligations in mind Once we complete our prompt review of the unredacted 302s held by the Special Counsel’s Office, we will timely produce any *Giglio* information that we should find.”¹ The Government now attributes the delay to undersigned counsel, claiming that “despite two requests, the defense has not provided a counterproposal to the conditions we have proposed.” Gov’t Mot. 2. These “conditions” sought by the Government – in exchange for making available *Giglio* materials that the Government is obligated to produce – included (i) agreeing to review only a subset of Flynn’s 302s based on some standard of relevance determined by the Government, (ii) stipulating to the authenticity of documents that the defense has not yet seen, and (iii) agreeing to characterize as “business records” certain emails and text messages that in no way fall within that hearsay exception.²

Contrary to the Government’s claim, undersigned counsel has already responded to and rejected these “conditions” that the Government seeks to impose in exchange for access to *Giglio* materials to which Mr. Rafiekian is entitled, including Flynn’s 302s. In light of the time-consuming nature of reviewing potentially classified materials and the imminent pre-trial motions deadline, the Court should deny the Government’s last-minute effort to further delay disclosure of the requested *Giglio* materials. For the reasons described above and in Mr. Rafiekian’s Motion to

¹ See Email from James P. Gillis, Assistant United States Attorney, to Mark MacDougall, Attorney for Bijan Rafiekian (Feb. 22, 2019).

² See Email from James P. Gillis, Assistant United States Attorney, to Mark MacDougall and Robert Trout, Attorneys for Bijan Rafiekian (Jan. 17, 2019).

Compel, the Court should deny the Government's motion to continue and hold the hearing as scheduled on March 15, 2019.

Respectfully submitted,

/s/
Mark J. MacDougall (*Pro Hac Vice*)
Stacey H. Mitchell (*Pro Hac Vice*)
Counsel for Bijan Rafiekian
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: (202) 887-4000
Fax: (202) 887-4288
E-mail: mmacdougall@akingump.com
shmitchell@akingump.com

/s/
Robert P. Trout (VA Bar # 13642)
Counsel for Bijan Rafiekian
Trout Cacheris & Solomon PLLC
1627 Eye Street, NW
Suite 1130
Washington, DC 20006
Telephone: (202) 464-3311
Fax: (202) 463-3319
E-mail: rtrout@troutcacheris.com

CERTIFICATE OF SERVICE

I hereby certify that, on the 12th day of March 2019, true and genuine copies of Defendant's Opposition to Government's Motion to Continue Hearing on Defendant's Motion to Compel Records was sent via electronic mail by the Court's CM/ECF system to the following:

James P. Gillis
John T. Gibbs
Evan N. Turgeon
U.S. Attorney's Office (Alexandria-NA)
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3700
Email: james.p.gillis@usdoj.gov
john.gibbs@usdoj.gov
evan.turgeon@usdoj.gov

/s/
Robert P. Trout (VA Bar # 13642)